House
Legislative
Analysis
Section

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PREJUDGMENT INTEREST RATES ON "WRITTEN INSTRUMENTS"

House Bill 4448 (Substitute H-1)
First Analysis (3-22-01)

Sponsor: Rep. Andrew Richner
Committee: Civil Law and the Judiciary

THE APPARENT PROBLEM:

The Revised Judicature Act (RJA) provides for the calculation and payment of interest on money judgments in civil cases. (See BACKGROUND INFORMATION.) With regard specifically to complaints filed on or after January 1, 1987, if a judgment is rendered on a "written instrument," a 12 percent interest rate (calculated from the date the complaint is filed to the date the judgment is satisfied), compounded annually, is applied, unless the instrument has a higher rate of interest, which then is the rate that is applied to the judgment. The law does not define "written instrument," but a 1998 state supreme court decision ruled that the lower courts properly found that an insurance contract was a "written instrument" and, therefore, subject to the law's 12 percent interest rate. (See *Yaldo v North Pointe Insurance Company*, 457 Mich 341.)

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to strike the current 12 percent interest rate on money judgments on complaints filed on or after January 1, 1987. Instead the bill would apply prejudgment interest rates only to written instruments (on complaints filed on or after January 1, 1987) that already had specified interest rates. If the rate in the written instrument were legal, that would be the prejudgment interest rate. The bill effectively would move judgments involving written instruments without a specified interest rate under the provisions of another subsection that set the interest rate at one percent over the average interest rate for five-year treasury bill notes in the six months preceding July 1 and January 1, compounded annually. (Reportedly the statutory interest rate for July 1, 2000, was 7.473 percent and for January 1, 2001, 6.965 percent. See BACKGROUND INFORMATION.)

More specifically, the bill would require that for complaints filed on or after January 1, 1987, if a judgment were rendered on a written instrument "evidencing indebtedness with a specified interest rate," the interest would be calculated from the date the complaint were filed to the date the judgment were satisfied at the rate specified in the written instrument (if the rate were legal at the time the instrument were executed).

MCL 600.6013

BACKGROUND INFORMATION:

Other legislation. Senate Bill 207, which was introduced on February 14, 2001, and referred to the Senate Judiciary Committee, would amend the same section of the Revised Judicature Act. According to the Senate Fiscal Agency Committee Summary, dated 2-16-01, the Senate bill would amend the Revised Judicature Act (RJA) so that the current 12 percent interest rate that is applied to judgments rendered on written instruments under section 6013 of the act would, instead, "apply if a judgment were rendered on a note, bond, land contract, insurance contract, or other written instrument evidencing indebtedness with a specified interest rate."

The "(pre)judgment interest statute." Section 6013 of the Revised Judicature Act (RJA) sometimes is called "the (pre)judgment interest statute." As originally written, this section of the RJA (Public Act 236 of 1961) calculated interest at 5 percent per year from the date of judgment on any money judgment in a civil action – unless the judgment was rendered on a written instrument having a higher rate of interest, in which case the higher rate of interest was used, but capped at a maximum rate of 7 percent. Thus, originally, this section of the RJA was a "judgment interest statute." However, in 1965, Public Act 240 amended this section of the RJA to calculate the interest from the time of the filing of a complaint, rather than the rendering of the judgment, thereby turning this section into the "prejudgment interest statute."

The prejudgment interest rate was increased twice: once in 1972, and again in 1980. In 1972, Public Act 135 increased the rate of interest by one percent, from 5 percent to 6 percent. Then in 1980, in light of the then-current high market rates of interest, Public Act 134 of 1980 rewrote section 6013, among other things, to increase the prejudgment interest rate from 6 percent to 12 percent for complaints filed after June 1, 1980, unless the judgment was rendered on a written instrument with an interest rate higher than 12 percent annually. However, the postjudgment interest rate was capped at 13 percent, regardless of any specified interest rate in the written instrument (since once a judgment is rendered, there no longer is a contract). (See the House Legislative Analysis Section analysis of Senate Bill 324 as enrolled, dated 5-27-80.)

Six years later, in 1986, legislation mandated that the 12 percent prejudgment interest rate expire on January 1, 1987, as part of a "tort reform" package, which effectively meant that the prejudgment interest rate on judgments of written instruments would decrease substantially. The 1986 legislation not only set the judgment interest in tort actions at one percent over the five-year treasury bill rate, it also "sunsetted," as of January 1, 1987, the 12 percent interest rate added by Public Act 134 of 1980. However, the very next year, Public Act 50 of 1987 added the current subsection (5), re-establishing a 12 percent prejudgment interest rate for judgments rendered on written instruments (on complaints filed on or after January 1, 1987) unless the written instrument had a higher rate of interest. Thus Public Act 50 of 1987 virtually restored the provisions in this section of the RJA that had been added by Public Act 134 of 1980.

The last time this section of the RJA was amended was in 1993, when Public Act 78 added provisions concerning medical malpractice.

U.S. Treasury bill note interest rates. According to a chart in the February 2001 *Michigan Bar Journal*, interests rates for money judgments, as based on treasury bills (plus one percent added interest) and calculated at six-month intervals from the date of filing, ranged from a low of 6.025 percent in January 1994 to a high of 10.105 percent in July of 1989. As of January 1, 2001, the interest rate was 6.965 percent.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (3-22-01)

ARGUMENTS:

For:

Proponents of the bill argue for it on a number of grounds. One is that the interest rate on written contracts should not be greater than that imposed on oral contracts or tort defendants. Another is that the current 12 percent interest rate in the Revised Judicature Act is both punitive and unnecessary, especially since there already are punitive provisions in the Uniform Trade Practices Act [MCL 500.2006(4)] that allow an insured to recover 12 percent interest from its insurer where no complaint has been filed to force payment and those provisions apply when an insurance company is dilatory in making timely payments to the insured. Although the defendant insurance company in *Yaldo* argued that the court of appeals was wrong in saying that the Uniform Trade Practices Act (UTPA) applied in this case because 12 percent interest can be awarded under the UTPA only when a claim is not reasonably in dispute, the state supreme court majority ruling held that that the insurance company misread the UTPA; the plaintiff in *Yaldo* could have filed a claim under the UTPA because with respect to collecting a 12 percent interest, "reasonable dispute is applicable only when the claimant is a third-party tort claimant. Here [in *Yaldo*], plaintiff is not such a claimant. Rather he is seeking reimbursement for the loss of his business due to a fire. Therefore plaintiff could have recovered interest at the rate of twelve percent per annum under the Uniform Trade Practices Act." Moreover, proponents of the bill argue that when interest rates are low, the 12 percent rate currently in the RJA serves as a financial incentive for plaintiffs to delay settling.

The defendant insurance company in *Yaldo* argued that "written instrument" in this section of the Revised Judicature Act must be defined as a writing that expressly contains a rate of interest, such as a negotiable instrument. The dissenting opinion in *Yaldo* agrees, arguing in part that the legislative history of this section of the RJA shows that "written instrument" was intended to cover only interest-bearing instruments.

The bill would statutorily affirm the dissenting opinion in *Yaldo*, thereby treating oral and written contracts equally. The bill also would strike the current provision that a 12 percent rate apply to prejudgment interest so that the rate of interest in the written instrument would be the applicable prejudgment interest rate.

Response:

In the words of the state supreme court, in *Yaldo v North Point Ins Co* (1998), the legislature's choice "to impose a higher rate of interest on defendants who enter into written contracts is not arbitrary. First, there is a distinction between contract claims and tort claims. Tort claimants often do not have a preexisting relationship with their tortfeasors. On the other hand, there is a preexisting relationship between two parties who have signed a written contract. Greater expectations regarding performance and payments are likely to exist when the parties have established their rights and responsibilities before a controversy arises. While so great a distinction is not found between written contracts and oral contracts, there is nevertheless a greater degree of certainty when a written contract is involved. It would be logical for the Legislature to impose a higher interest rate for written instruments. Defendant's [i.e., the North Pointe Insurance Company] argument is especially weak in light of [provisions in the Uniform Trade Practices Act, MCL 500.2006(4)], which provides for a twelve percent interest rate when an insurance company does not pay a claim on a timely basis." Moreover, as the state supreme court ruled in *Yaldo*, merely because, under some circumstances, the Revised Judicature Act and the Uniform Trade Practices Act overlap does not mean that the "clear and unambiguous language" in the disputed provision of the RJA – namely, "written instrument" – must be changed. An insurance contract clearly and unambiguously is a "written instrument," and so falls under the 12 percent interest provisions of the RJA.

Against:

The purpose of the current law in section 6013(5) of the Revised Judicature Act, in the words of the state supreme court in *Yaldo*, is to compensate plaintiffs for delays in recovering money damages, and serves as a consumer protection measure. Current law provides insurance companies in particular with a financial incentive to make timely payment on valid claims rather than waiting to pay on valid claims until the insured is forced to take on the expense of suing the insurance company. Since there is such an immense disparity in the bargaining power between individuals and large insurance companies, it is virtually certain that individuals will be unable to "negotiate" an interest rate with the insurance companies when taking out insurance policies. Applying the 12 percent interest rate only to interest-bearing instruments, therefore, would remove an important consumer protection measure in current law. Moreover, removing the 12 percent prejudgment interest rate would encourage defendants – such as large insurance companies or manufacturers – to prolong litigation rather than move to a timely settlement. At the very least, the bill should be amended to include among the written instruments that would be subject to the 12 percent interest rate not only interest-bearing instruments but also notes, bonds, land contracts, insurance contracts, and written warranties, as Senate Bill 207 would do.

POSITIONS:

A representative of the Michigan Insurance Federation testified in support of the bill. (3-13-01)

Analyst: S. Ekstrom

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.